

Tax Type: MOTOR FUEL TAX
Issue: Definition of Commercial Motor Vehicles

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No.

Taxpayer

Karl W. Betz
Admin. Law Judge

On April 7, 1990, the Department of Revenue (hereinafter "Department") issued Notice of Tax Liability (NTL) XXXXX for Illinois Special Fuel Use Tax for the period of July 1, 1986, through June 30, 1989, in the amount of \$166,139.51 inclusive of tax, penalty and interest. The Department issued the NTL following an audit it performed upon taxpayer, and the adjusted liability is based upon changes the Department made in the quarterly fuel tax returns (IDR-280's) filed. These changes result from the Department Revenue Auditor's adjustment of the amounts of total "everywhere" mileage, Illinois miles, total "everywhere" special fuel and Illinois tax paid fuel reported by taxpayer on IDR-280 lines 1, 2, 4 and 7a, because such reported amounts represented data from the taxpayer's operation of two axle units during the period of July 1, 1986 through September 30, 1987.

The taxpayer having made a timely protest of the NTL, a hearing was scheduled by the Department in this matter. Before the hearing, taxpayer, through counsel, and the Department agreed the issues would be submitted upon the filing of a stipulated record. It was also agreed that taxpayer would furnish a Brief and Argument to support its position in this cause, which was thereafter filed. The convening of a formal hearing was waived and no witnesses were called to testify. By stipulation the following documents were admitted into evidence:

EXHIBIT 1 Notice of Tax Liability XXXXX issued April 7, 1990.

EXHIBIT 2 Correction of Returns or Determination of Tax Due dated December 28, 1989, which reflects the tax assessed.

EXHIBIT 3 Audit Report and Related Workpapers.

EXHIBIT 4 Protest filed by Taxpayer, dated April 26, 1990, including all exhibits thereto.

Refunds were paid by the Department to taxpayer because the Motor Fuel Tax Law, Ill. Rev. Stat. ch. 120, par. 417 et seq.¹ provided that a purchaser of motor fuel could obtain a refund under certain circumstances, including when a motor carrier operated "commercial motor vehicles" upon the highways of Illinois and qualified pursuant to information filed on its quarterly fuel tax returns. One of the issues herein is whether taxpayer's two axle tractors were classified as "commercial motor vehicles" during the audit liability periods and if they were not, did this preclude taxpayer from using their operating data (i.e. mileage and fuel) on their filed returns to obtain refunds. The auditor recalculated the tax due after subtracting taxpayer's two axle unit information from the fuel tax returns. Because the tax due exceeded the amount the Department had refunded, the excess was established as liability.

The second issue is the effective date of Public Act 85-340. Regarding this issue, the parties have heretofore stipulated that any computational impact resulting from the commercial motor vehicle

definitional change in P.A. 85-340 will occur as of September 10, 1987.

After reviewing the exhibits and carefully considering all matters of record, I recommend the unresolved issue be decided in favor of the Department.

FINDINGS OF FACT:

1. The Department Revenue Auditor examined source documents including fuel and oil reports withdrawal records, state fuel spreadsheets, fuel inventory system transaction summaries and general commodities documents to determine the accuracy of the information reported by taxpayer on its special fuel use tax returns. Stipulation, Ex. No. 3

2. Over 96% of the truck tractor units operated by taxpayer during the audit period had less than three axles. Stipulation, Ex. No. 3

3. Taxpayer maintains several Illinois bulk fuel storage locations from which it makes withdrawals to fuel its fleet of vehicles. Stipulation, Ex. No. 3

4. Virtually all the fuel consumed by taxpayer's vehicles are withdrawals from its own bulk storage, with only minor amounts of fuel purchased on the road at filling stations or truck stops. Stipulation, Ex. No. 3

5. Illinois paid taxpayer the following refund amounts pursuant to alleged overpayments of special fuel use tax reported on its fuel tax returns:

Quarter	Amount	Warrant #
86/3	\$ 9,706.40	XXXXXX
86/4	\$25,120.36	XXXXXX
87/1	\$22,336.89	XXXXXX
87/2	\$ 7,146.18	XXXXXX
87/3	\$15,580.03	XXXXXX

Stipulation, Ex. No. 3, 4

CONCLUSIONS OF LAW: By Stipulation, the parties agreed to admit into the record the Department's corrected return in this matter. Ex. No. 2 It

is well settled under Illinois case law that once the auditor's corrected return is introduced into evidence at an administrative hearing proceeding before the Department, the prima facie case of the Department is established and the burden then shifts to the taxpayer to establish by competent documentary evidence through its books and records that the corrected return is not correct. *Copilevitz v Department of Revenue*, 41 Ill.2d 154 (1968); *Fillichio v Department of Revenue*, 15 Ill.2d 327 (1959). However, the prima facie correctness standard does not apply if the taxpayer shows that the Department's preparation of the corrected return did not meet a minimum standard of reasonableness, (*Clark Oil & Refining Corp. v. Johnson*, 154 Ill.App. 3d 773, 784 (1987)), and this is, in essence, what the taxpayer raises here through its argument that the auditor misinterpreted the law.

After considering the arguments raised, I cannot agree with the contention that XXXXX does not owe the special fuel use tax included in the instant assessment.

Section 1.17 of the MFTL, ILCS 505/1.17, defines a "Motor Carrier" to mean:

"... any person who operates or causes to be operated any commercial motor vehicle on any highway within this State."
(emphasis added)

The statutory definition of commercial motor vehicle as found in Ill. Rev. Stat., ch. 120, par 417.16 between July 1, 1986 and September 10, 1987 was:

1.16. "Commercial motor vehicle" means any truck, road tractor, or truck tractor with 3 or more axles, and any passenger motor vehicle that has seats for more than 12 passengers, that is propelled by special fuel, except for motor vehicles operated by this State or the United States, and school buses, and commercial motor vehicles owned by a manufacturer or dealer and held for sale, even though incidentally moved or operated on the highway or used for purposes of testing, demonstrating or delivery and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this State. (emphasis added)

Public Act 85-340 amended this provision, so that it read as follows:

"Commercial motor vehicle" means any truck with more than 2 axles, road tractor, or truck tractor, and any passenger motor vehicle that has seats for more than 20 passengers, except for motor vehicles operated by this State or the United States, and school buses, and commercial motor vehicles owned by a manufacturer or dealer and held for sale, even though incidentally moved or operated on the highway or used for purposes of testing, demonstrating or delivery and commercial motor vehicles operated solely within this state for which all motor fuel is purchased within this State." (emphasis added)

Prior to the 1982 amendment (P.A. 82-1009) the definition began by saying "commercial motor vehicle" meant "any truck, road tractor, or truck tractor combination (emphasis added) with 3 or more axles ..." The 1982 definition change, which excluded the word "combination", meant the truck tractors with less than three axles, such as those operated by taxpayer, were not within the definition and this was true even when it pulled a trailer so that the resulting combination contained three or more axles. Thus the 1982 definition change left XXXXX outside the statutory provisions.

Because two axle truck tractors were not "commercial motor vehicles" between July 1, 1986 and September 10, 1987 as acknowledged by the taxpayer (Brief, p. 8), it was outside the statutory definition of a motor carrier for the non-commercial vehicles it was operating, and these two axle tractor units comprised the vast majority of its fleet.

Having established that taxpayer's two axle tractor units were not "commercial motor vehicles", I must examine the effect this has upon the taxpayer having used its two axle units' data to obtain refunds. Taxpayer argues that because it operated some three axle unit commercial motor vehicles during the audit period, it is entitled to keep the refunds paid to it by the State of Illinois during the liability quarters (86/3 through 87/3) that are the result of data reported on its returns attributable to its operation of two axle tractor units. However, upon my examination of

the applicable statutory language, I cannot agree.

During the audit period, Section 13a of the MFTL (Ill. Rev. Stat. ch 120, par. 429a, now recodified as 35 ILCS 505/13a) imposed a tax on the use of special fuel upon the highways of Illinois by commercial motor vehicles.

Sections 13a.1 and 13a.2 (Ill. Rev. Stat. ch. 120, pars. 429a1 and 429a2) required a motor carrier to pay the tax and maintain records to support the number of miles traveled and amount of fuel used upon Illinois highways.

Section 13a.3 of the MFTL (Ill. Rev. Stat. ch 120, par. 429a3) which contained reporting requirements for motor carriers,² stated in pertinent part:

Every motor carrier who operates in Illinois shall, on or before the last day of the month next succeeding any calendar quarter, file with the Department a report, in such form as the Department may by rule or regulation prescribe, setting forth a statement of the number of miles traveled in this State during the previous calendar quarter, the number of gallons of special fuel consumed on the highways of this State during the previous calendar quarter, the number of gallons of special fuel purchased within this State during said previous calendar quarter, and which may include both gallons of fuel purchased and miles operated that were unavailable for the 2 immediately preceding calendar quarter reports, upon which a tax was paid under this Act, and such other information as the Department may reasonably require. (emphasis added)

* * *

A motor carrier who purchases special fuel in this State who pays a tax thereon under any section of the Motor Fuel Tax Law other than Sections 13a, 13a.1, 13a.2 and 13a.3, and who does not apply for a refund under Section 13 of the Motor Fuel Tax Law, shall receive a gallon for gallon credit against his liability under Sections 13a, 13a.1, 13a.2 and 13a.3 hereof. The rate under Section 2 of this Act shall apply to each gallon of special fuel used by such motor carrier on the highways of Illinois during the previous calendar quarter in excess of the special fuel purchased in Illinois during such previous calendar quarter. (emphasis added)

Thus the statutory payment and recordkeeping requirements of Sections 13a.1 and 13a.2 were specifically applied and limited to "motor carriers" as were the cited reporting requirements in Section 13a.3. This means that the taxpayer herein was not required or authorized to report its non-

commercial motor vehicle data on its Section 13a.3 quarterly fuel use tax reports because its operation of these two axle tractor units was not activity of a motor carrier. As the Section 13a.3 "gallon for gallon credit" was only authorized to be taken by a "motor carrier" against liability under Sections 13a, 13a.1, 13a.2 and 13a.3, the taxpayer, for the 96% portion of its fleet that were not commercial vehicles, cannot use the quarterly fuel tax report to apply for and receive a refund of fuel tax when there was no liability originally established against it for these vehicles as a motor carrier pursuant to statutory provisions.

Therefore I cannot agree with the taxpayer's contention (Brief, p. 6) that the refund is not limited to fuel consumed by "commercial motor vehicles", and I find it was proper for the auditor to exclude the non-commercial motor vehicle data in her adjustments to the filed fuel tax reports. I further find, therefore, that her preparation of the corrected return met a minimum standard of reasonableness.

The record makes it clear that taxpayer maintained several bulk fuel storage locations in Illinois (Brief, p. 2), and the auditor's examination of fuel usage by the tandem axle units revealed only bulk withdrawals and no on-the-road purchases of fuel. Counsel asserts it is the policy of taxpayer to " . . . pay any Illinois fuel taxes owed at the time they issue fuel from their own fuel reserves." Brief, p. 2. While taxpayer, as a licensed Illinois motor fuel supplier holding Supplier License #S-00064, was filing monthly supplier returns on which it was paying tax on its bulk fuel withdrawals, it was only paying the part (a) portion of the special fuel tax, as found in subsection (1) of Section 13(a), which is the same basic motor fuel tax imposed in Section 23 of the MFTL that a supplier must pay under Section 5a4 of the MFTL. Because the part (b) portion of the special fuel use tax (Section 13a (2)) was not being paid, to allow this Taxpayer to receive a "refund" for it would constitute a payment not

authorized or intended by the General Assembly.

Because the tax must be reported as liability under the statute, and actually paid, I cannot grant Taxpayer's request for approval of refund credits whose disallowance comprise the liability in the contested NTL.

Another issue in this cause concerns the effective date of Public Act 85-340. As noted above, the parties have heretofore agreed that the effective date of this amendment is September 10, 1987. Thus the parties have agreed that the taxpayer's two axle units were "commercial motor vehicles" during September 10 through September 30, 1987. I recommend the assessment be reduced by a tax amount of \$4,526.00, which is the proportional amount of the 1987 third quarter corrected return liability attributable to the September 10-30 time frame. After this adjustment, I recommend the assessment stand as issued.

Relative to the request of Taxpayer for abatement of penalty in this case, I must note that my limited authority to recommend delinquency assessment penalty reductions does not include this deficiency situation.

RECOMMENDATION: Based upon the aforementioned findings of fact and conclusions of law, I recommend the Department reduce NTL XXXXX as indicated and issue a final assessment.

Karl W. Betz
Administrative Law Judge

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1. Hereinafter the "MFTL". I use the Ill. Rev. Stat. cite to chapter 120 because that was the statutory citation in effect during the audit time period. This statute was subsequently recodified and the current citation is 35 ILCS 505/1 et seq.
 2. See the definition of motor carrier on page 4.
 3. Ill. Rev. Stat. ch. 120, par. 418, now 35 ILCS 505/2.
 4. Ill. Rev. Stat. ch. 120, par 421a, now 35 ILCS 505/5a.